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Sands Bethworks Gaming, LLC d/b/a Sands Casino Resort Bethlehem and Law Enforcement Employees Benevolent Association. Case 04-CA-076289

May 30, 2012

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HAYES
AND GRIFFIN

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on March 9, 2012,¹ the Acting General Counsel issued the complaint on March 19, 2012, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain following the Union's certification in Case 04-RC-021833. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On April 5, 2012, the Acting General Counsel filed a Motion for Summary Judgment. On April 20, 2012, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the certification on the basis that the Board was not properly constituted as required by Section 3(b) of the Act and thus did not have the authority to consider the Respondent's exceptions to the Hearing Officer's Report on objections to the election, or to overrule such objections in the underlying representation case proceeding.² In addition, the Respondent makes arguments that were raised and rejected in the underlying representation proceeding.

¹ The complaint erroneously states that the Union filed a charge on March 12, 2012. The charge, which is attached as an exhibit to the motion, was filed on March 9, 2012.

² For the reasons set forth in *Center for Social Change, Inc.*, 358 NLRB No. 24 (2012), we reject this argument.

Consequently, all representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

In its opposition to the Acting General Counsel's motion, the Respondent contends, for the first time, that a hearing should be held to determine whether the Union has impermissibly delegated or transferred its Section 9(a) responsibilities to an allegedly separate entity, "Local 777." In support of its assertion, the Respondent states that it discovered a website in early April 2012 which demonstrates that "Local 777," rather than the Union, represents the Respondent's unit employees. However, the complaint alleges, and the Respondent admits, that on March 2, 2012, the Union requested bargaining with the Respondent. The complaint further alleges, and the Respondent admits, that by letter dated March 6, 2012, the Union was notified that the Respondent refused to recognize and bargain with it. There is no indication that any entity other than the certified Union has requested, or will request, recognition and bargaining from the Respondent. Accordingly, the Respondent has not established that a genuine issue of material fact exists warranting a hearing with respect to the allegations in this proceeding.

Accordingly, we grant the Motion for Summary Judgment.³

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has operated a casino and hotel at 77 Sands Boulevard, Bethlehem, Pennsylvania (the Resort). During the 12-month period preceding the issuance of the complaint, the Respondent received gross revenues in excess of \$500,000 and purchased and received at the Resort goods valued in excess of \$5000 directly from points outside the Commonwealth of Pennsylvania.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, Law Enforcement Em-

³ Therefore, the Respondent's motion to dismiss the complaint in its entirety is denied.

ployees Benevolent Association, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held by secret ballot on July 22, 2011, the Union was certified on February 10, 2012, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time security guards employed by Respondent at its Resort located at 77 Sands Boulevard, excluding the locksmith, all other employees and supervisors as defined in the Act.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

At all material times, Holly Eicher has been vice president-general counsel of the Respondent, and has been an agent of the Respondent within the meaning of Section 2(13) of the Act.

By letter dated March 2, 2012, to Holly Eicher, the Union requested the Respondent to recognize and bargain with it as the exclusive collective-bargaining representative of the unit concerning the wages, hours, and other terms and conditions of employment. By letter dated March 6, 2012, the Respondent, by Holly Eicher, notified the Union that it refused to recognize and bargain with it as the exclusive collective-bargaining representative of the employees in the unit. We find that this failure and refusal constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since March 6, 2012, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided

by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Sands Bethlehem Gaming, LLC d/b/a Sands Casino Resort Bethlehem, Bethlehem, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Law Enforcement Employees Benevolent Association as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time security guards employed by Respondent at its Resort located at 77 Sands Boulevard, excluding the locksmith, all other employees and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Bethlehem, Pennsylvania, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

means.⁵ Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed its facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 6, 2012.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 30, 2012

Mark Gaston Pearce, Chairman

Brian E. Hayes, Member

Richard F. Griffin Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD
APPENDIX
NOTICE TO EMPLOYEES

⁵ For the reasons stated in his dissenting opinion in *J. Picini Flooring*, 356 NLRB No. 9 (2010), Member Hayes would not require electronic distribution of the notice.

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with Law Enforcement Employees Benevolent Association as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

All full-time and regular part-time security guards employed by us at our Resort located at 77 Sands Boulevard, excluding the locksmith, all other employees and supervisors as defined in the Act.

SANDS BETHWORKS GAMING, LLC D/B/A
SANDS CASINO RESORT BETHLEHEM